

1905

FILE No. 10 OF 1904-05.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

LEGISLATIVE.

MARCH

A' Collection Serial Nos. 1—6.

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1904-05.

GENERAL AND REVENUE SECRETARIAT.

LEGISLATION FOR MARCH.

NOTES.

FILE No. 10 of 1904-05.

Amendment of Section 16B of the Mysore Chief Court Regulation I of 1884.

1. From the Registrar of the Chief Court of Mysore, No. 1128--73, dated 16th August 1904.

Requests that the section may be amended by substituting the words "Civil and Criminal Revision Cases" for "application for revision in civil and criminal cases" and by deleting from it the words "on such applications," so as to empower a single Judge, under the section, to dispose of all revision petitions and cases, civil and criminal, without limiting his power to cases in which there have been applications for revision by the parties.

1. Under Section 16B as inserted by Regulation No. IV of 1903, a single Judge of the Chief Court has been disposing of civil and criminal cases for revision. The question now raised by the Chief Court is whether Section 16 B is limited only to civil and criminal *applications* for revision or whether it includes cases in which revision proceedings can be initiated by the Chief Court itself on perusal of calendars or references made under Section 438 of the Criminal Procedure Code.

2. Before Section 16B was enacted, a single Judge used to dispose of the latter class of cases if he found no reason to interfere with the proceedings of the lower Courts. Otherwise they used to be referred to a Bench of two Judges.

3. Section 16B, inserted by Regulation No. IV of 1903, merely left it to the discretion of the Judge to refer any *applications* for revision to a Bench of two Judges. If, therefore, Section 16 B is inapplicable to cases in which no applications are made, the original rule of practice has to be relied on.

4. Although the headnote to Section 16 B employs the expression "revision cases," the section itself is obviously restricted to revision cases in which applications shall have been made. The law as contained in the section was proposed by the Chief Court itself (*vide* its letter); and was referred to in para 4 of our letter to the Resident. Hence there can be little doubt that the section in question is not applicable to revision cases of the second description.

5. Since the amending Regulation No. IV of 1903 had for its object the attainment of a speedy disposal of cases and with that view, provided for enlarged powers in Section 16 B, the original rule of practice under which a single Judge could dispose of cases of the second class must be regarded as being still in force. It is not touched by Section 16 B at all. Under that rule, the proceedings of a single Judge (subsequent to the enactment of Section 16 B) are valid so far as they are consistent with it, or in other words, the proceedings of such Judge modifying or reversing the orders of the lower Courts cannot be valid.

6. Hence, without further amendment, a single Judge of the Chief Court cannot exercise the powers vested in him by Section 16 B as regards the second class of cases.

7. The question for determination is whether there is no difference whatever between the two classes of cases as the Chief Court seems to view (*vide* the last para of the letter under disposal). Revision on an application and revision on one's own motion are two different things; and a more limited or circumscribed power in the case of the second seems to be more conducive to justice.

I humbly share this view.

B. K. V.
3-10-04.

D. M. NARASINGA RAO.

30-9-04.

8. By Section 16B of the Chief Court Regulation, a Judge may hear applications for revision in civil and criminal cases; but now they want power to revise cases without applications *suo moto*.

K. VENKATA VARADA IYENGAR.

3-10-04.

9. No distinction was intended to be made between one kind of revision proceedings and another, *i.e.*, between those initiated on petition and those initiated *suo moto*. "Applications for revision in civil and criminal cases" was intended to stand for "Revision cases, civil and criminal." In other words, it was not intended that certain revision matters should be dealt with under Section 16 B, and others under the Rules of Practice of 1888, etc. That being so, the question is whether the expression "applications for revision in civil or criminal cases" excludes matters taken up by the Chief Court *suo moto*, *i.e.*, without a petition. On this point, the Chief Court, as I read in Registrar's letter, has expressed no opinion. That letter merely asks that the section be amended "if the Government are of opinion that this (the non-existence of any distinction) is not in accordance with the wording of the section." In these circumstances, I am not satisfied that any legislative action is really called for. This may be explained to the Chief Court and an enquiry made as to whether they consider an amendment of the section nevertheless indispensable. If we are to make an amendment, it should be in terms of the pencil slip. I have attached to the Registrar's letter. The Chief Court is not in favor of any distinction.

10. The question is one of interpretation and the Chief Court whose wording (enclosure to Registrar's letter dated 22nd June 1903) the legislature adopted, does not now express the opinion that cases other than petition are excluded by the section. If the Chief Court's proposal contemplated no differentiation, we could not, in legislating in accordance therewith, have intended any.

C. S.
4-10-04.

11. Let the enquiry be made. If the interpretation suggested is reasonable and acceptable. I would not go so soon to the Government of India for another alteration.

P. N. K.
6-10-04.

12. Draft accordingly.

B. K. VENKATA VARADA IYENGAR.
8-10-04.

13. Draft submitted.

K. S. CHENDRASEKHARA IYER.
12-10-04.

14. Passed.

B. K. VENKATA VARADA IYENGAR.
15-10-04.

2. *To the Registrar of the Chief Court, No. J. 982—Legis. 10-2, dated the 21st October 1904.*

States that no distinction was intended to be made between one kind of revision proceedings and another, *i. e.*, between those initiated on petition and those initiated *suo moto* and enquires whether in the opinion of the Chief Court an amendment of the section is indispensable.

3. *From the Registrar of the Chief Court, No. 2620—152, dated the 9th November 1904.*

States that the Judges are of opinion that an amendment of Section 16B is necessary.

15. The 1st Councillor's note as to how the amendment should read is attached to the Registrar's letter. Serial No. 1.

T. K. S.	N. N.
17-11-04.	17-11-04.

16. Put up a draft regulation in the terms suggested by the 1st Councillor, and a letter to the Residency explaining the necessity for it as in the last para of the Chief Court's letter of 16th August 1904.

K. S. CHENDRASEKHARA IYER.
18-11-04.

17. Draft submitted.

T. K. S.	N. N.
19-11-04,	19-11-04

18. I am not satisfied that an amending regulation is indispensable. Since, however, the Chief Court think otherwise, I defer to their opinion. The drafts are suitable and may be approved.

C. S.
22-11-04.

19. Circulate for disposal by circulation.

P. N. K.
15-12-04.

20. To the Registrar for circulation.

B. K. VENKATA VARADA IYENGAR,
16-12-04.

21. The draft amendment may be approved.

C. M.
22-12-04.

Submitted to His Highness.

22. The annexed amending draft regulation is intended to remove the doubts which have arisen as to the powers of a single Judge of the Chief Court to dispose of civil and criminal revision cases initiated *suo moto*, and not on a petition. The draft as well as the letter to the Residency applying for the sanction of the Government of India may be approved.

P. N. K.
31-12-04.

Order.

23. Approved.

K. R. W.
H. H. the Maharaja.
7-1-05.

24. Issue.

P. N. K.
7-1-05.

4. To the First Assistant Resident, No. Pol. 580, dated 11th January 1905.

Forwards a draft Regulation to amend Section 16B of the Mysore Chief Court Regulation, and requests him to obtain the sanction of the Government of India for its promulgation.

5. From the First Assistant Resident, No. 1063, dated 21st February 1905.

States that the Government of India have no objection to the passing of the draft Regulation into law and requests that a copy of the Regulation as passed may be forwarded for information.

25. The draft Regulation has now to be submitted to His Highness for formal sanction. Two fair typed copies of the draft Regulation are submitted herewith.

K. S. CHENDRASEKHARA IYER.
24-2-05.

16. Submitted to the Dewan Sahib through the 1st Councillor.

B. K. VENKATA VARADA IYENGAR.
25-2-05.

27. Seen. May be passed and promulgated.

C. S.
26-2-05.

Submitted to His Highness.

28. For final approval before the regulation is promulgated.

P. N. K.
28-2-05.

Order.

29. Sanctioned.

K. R. W.
H. H. the Maharaja.
2-3-05.

30. Publish.

P. N. K.
3-3-05.

6. Government Order No. J. 2578, dated the 10th March 1905, to the Compiler, Mysore Gazette. Orders the promulgation of the above draft regulation as Regulation No. II of 1905.

Endorsement to the Registrar, Chief Court, No. J. 2579, dated the 10th March 1905.

Forwards copy of Serial No. 6 for information.

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Legislative, March 1905.*

Amendment of Section 16B of the Mysore Chief Court Regulation, I of 1884.

FILE No. 10 of 1904-05.

*From V. A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, No. 1128-73, dated Bangalore,
16th August 1904, to B. K. Venkata Varada Iyengar, Esq., Secretary to the Government of
Mysore, General and Revenue Department.*

A doubt having arisen as to the scope of Section 16 B of Regulation IV of Serial No. 1 1903, amending the Mysore Chief Court Regulation, 1884, I am directed to submit the following for the consideration of Government:—

Prior to November 1903, when the said Regulation IV of 1903 was passed, the powers of a single Judge were regulated by a Rule of the Court framed under Section 19 of the Chief Court Regulation. The rule is quoted below:—

“The powers vested in the Chief Court may be exercised by one of the Judges of the said Court in the following cases:—

- (1) Revision of calendars and proceedings of any Criminal Court submitted to the Chief Court under Rule of Practice No. 58, dated 1st September 1892.
- (2) Applications for suspension of sentence or for release of accused on bail, pending disposal of appeal or application for revision.
- (3) Proceedings and reports submitted for orders under Sections 123 and 124 of the Criminal Procedure Code.
- (4) Disposal of questions referred to under Section 185 of the Criminal Procedure Code.
- (5) Orders under Sections 427, 498, 526 and 526 A of the Criminal Procedure Code.
- (6) Power to call for records under Section 435 of the Criminal Procedure Code and Section 622 of the Civil Procedure Code.
- (7) Orders under Section 505, Civil Procedure Code.
- (8) Enquiry under Section 593, Civil Procedure Code.
- (9) Applications for stay of execution of decrees, or for stay of further proceedings, pending disposal of appeal or application for revision.
- (10) Admission of petitions and appeals Civil or Criminal.
- (11) Applications for transfers of cases from one Court to another, under Section 25 of the Civil Procedure Code.
- (12) Applications for emolument as Pleaders.
- (13) Orders under the Mysore Prisoners' Testimony Regulation. Provided that no decree, order, sentence or decision of any Court, shall be reversed by any Judge of the Chief Court sitting alone.

Provided also that it shall be competent for the Judge before whom any application may be posted for hearing, at any time before he shall have determined the same, to refer it for hearing and determination by a Bench of two Judges.

And provided also that if an order is made *ex parte* by a single Judge, it shall be competent for that Judge to revise and alter it, after hearing both parties.

And provided further that it shall always be competent for a Bench consisting of two other Judges of the Chief Court, or for the Full Bench of the said Court, upon its own motion or upon the application of any party, to revise and alter any order which may be passed by a single Judge.”

Civil and revision petitions were always posted before a Bench of two Judges while Criminal Revision Petitions were either posted before a Bench of two Judges or were on perusal of records disposed of by two Judges. In Criminal revision cases, *i.e.*, cases in which the records were called for on perusal of calendars or cases referred by District Magistrates, orders were passed by a single Judge if the decisions of the Lower Court were not interfered with, but if they had to be reversed or modified orders were passed by two Judges.

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Since November last all Civil and Criminal revision cases except those referred to a Bench used to be disposed of by a single Judge under Section 16B of the Amending Regulation of 1903, the words "applications for revision in Civil and Criminal cases" in the said section being interpreted as including cases in which revision proceedings were initiated by the Court itself on perusal of calendars or by the District Magistrates by references made under Section 438 of the Criminal Procedure Code.

The doubt that has now arisen is whether by Section 16 B of Regulation IV of 1903, the powers exercisable by a single Judge are confined to cases in which there have been "applications for revision" by the parties or whether they extend equally to all revision petitions and cases, Civil and Criminal.

If a single Judge can dispose of such cases arising out of 'applications' made by parties there is no reason why he should not exercise the power when there has been no application. If, however, the Government are of opinion that this is not in accordance with the wording of the section, I am to request that the section may be amended by substituting the words "Civil and Criminal Revision cases" for "applications for revision in Civil and Criminal cases" and deleting from it the words "on such applications."

To the Registrar of the Chief Court of Mysore, letter No. J. 982, dated the 21st October 1904.

I am directed to acknowledge the receipt of your letter No. 1128—73, dated Serial No. 2, the 16th August 1904, giving expression to a doubt whether by Section 16B of Regulation I of 1884, the powers exercisable by a single Judge are confined to cases in which there have been "applications for revision" by the parties or whether they extend also to the revision cases Civil and Criminal taken up by the Chief Court *suo moto*, and requesting that the section may be amended, if Government are of opinion that it is not in accordance with the wording of the section for a single Judge, who can dispose of cases arising out of "applications" made by parties to exercise that power when there has been no application.

2. No distinction was intended to be made between one kind of revision proceedings and another, *i.e.*, between those initiated on petition and those initiated by the Court *suo moto*. The expression "applications for revision in Civil and Criminal cases" was intended to stand for "revision cases Civil and Criminal." In other words, it was not intended that certain revision matters should be dealt with under Section 16 B, and others under the Rules of Practice of 1888 and subsequent years. In these circumstances, the question is whether the expression "application for revision in Civil or Criminal cases" includes matters taken up by the Chief Court *suo moto*, *i.e.*, without a petition. The letter under reply does not convey the opinion of the Chief Court on this point; but merely asks that the section be amended "if the Government are of opinion that this (the non-existence of any distinction) is not in accordance with the wording of the section."

3. The question being one of interpretation, I am directed to enquire whether in the opinion of the Chief Court an amendment of the section is nevertheless indispensable.

*From V. A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, letter No. 2620—152,
Bangalore, dated 9th November 1904.*

With reference to your letter No. J. 982—Leg. 10-2, dated the 21st ultimo, Serial No. 3 I am directed to state that the Judges are of opinion that the amendment of Section 16B of Regulation I of 1884 suggested in my letter No. 1128—73, dated 16th August 1904 is necessary.

*To the First Assistant to the Hon'ble the Resident in Mysore, letter No. Pol. 580, dated 11th
January, 1905.*

Adverting to Section 16 B of the Mysore Chief Court Regulation, I of 1884, Serial No. 4 as amended by Regulation IV. of 1903, I am directed to state that a doubt has now arisen whether, under that section, the powers exercisable by a single Judge are confined to cases in which there have been "applications for revision" by the parties or whether they

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Amendment of Section 16B of the Mysore Chief Court Regulation, I of 1884.

can be deemed to extend equally to all revision petitions and cases, including those initiated by the Court itself on perusal of calendars or by reference from District Magistrates. The Chief Court have pointed out that if a single Judge can dispose of such cases arising out of applications made by parties, there is no reason why he should not exercise that power when there has been no application.

2. I am accordingly to forward herewith a draft of a Regulation to amend the section in question, so as to make it applicable to Civil and Criminal Revision cases generally; and to request that the sanction of the Government of India may be procured for its promulgation.

[Enclosure to Serial No. 4.]

Draft of.

A regulation further to amend the Mysore Chief Court Regulation, I of 1884.

Whereas it is expedient further to amend the Mysore Chief Court Regulation, I of 1884, as amended by Regulations, II of 1890 and IV of 1903, His Highness the Maharaja is pleased to enact as follows:

Preamble.

Substitution of new section for Section 16B of Regulation I of 1884.

1. The following shall be substituted for Section 16 B of the Mysore Chief Court Regulation, 1884, namely :—

“Notwithstanding anything contained in the proviso to Section 19, any Judge of the Chief Court sitting alone shall have power to hear and dispose of Civil and Criminal revision cases, and his orders and decisions in such cases shall be final. Provided that any such Judge may, if he thinks fit, instead of disposing of any such case as aforesaid, refer such case to a Bench of two Judges for disposal.”

Power of single Judge to dispose of revision cases himself or to refer the same to a Bench.

From R. C. H. Moss-King, Esq., I.C.S., First Assistant to the Resident in Mysore, letter No. 1063, dated the 21st February 1905.

With reference to Mr. Venkata Varada Iyengar's letter Pol. No. 580, Serial No. 3 dated the 11th January 1905, I am directed to state that the Government of India have no objection to the Mysore Chief Court Regulation, I of 1884, being further amended as proposed by the Durbar.

2. I am to request that a copy of the amending Regulation as passed into law, may be forwarded to this office for information.

No. J. 2578—Legis. 10-6, dated 10th March 1905.

ORDER.—Ordered that the Regulation to further amend the Mysore Chief Court Regulation, I of 1884, which received the assent of His Highness the Maharaja on the 2nd day of March 1905 be promulgated.

To the Compiler, *Mysore Gazette*, with a copy of Regulation No. II of 1905, for publication in three successive issues of the Gazette, and for supply of 50 spare copies of the Regulation to this office and 10 to the Chief Court direct.

No. 2579—Legis. 10-6, dated 10th March 1905.

Copy to the Registrar, Chief Court, with reference to his letter No. 1128—73, dated 16th August 1904.

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Legislative, March 1905.*

Amendment of Section 16B of the Mysore Chief Court Regulation I of 1884.

[Enclosure to Serial No. 6].

Regulation No. II of 1905.

(Passed on the 2nd day of March 1905).

A Regulation further to amend the Mysore Chief Court Regulation, I of 1884.

Whereas it is expedient further to amend the Mysore Chief Court Regulation, I of 1884, as amended by Regulations, II of 1890 and IV of 1903, His Highness the Maharaja is pleased to enact as follows:—

Preamble.

1. The following shall be substituted
Substitution of new section for Section 16 B for Section 16 B of the Mysore Chief Court
of Regulation I of 1884. Regulation, 1884, namely:—

“Notwithstanding anything contained in the proviso to Section 19, any Judge of the Chief Court sitting alone shall have power to hear and dispose of Civil and Criminal revision cases, and his orders and decisions in such cases shall be final. Provided that any such Judge may, if he thinks fit, instead of disposing of any such case as aforesaid, refer such case to a Bench of two Judges for disposal.”

Power of single Judge to dispose of revision cases himself or to refer the same to a Bench.